These results seem inevitable in the case of group *c*, unless we adopt the view that a joint will presumptively implies a contract to keep the will unrevoked.[7]

Turning to joint wills where a contractual relation is involved, it would seem as a matter of fact that a contract to keep the will unrevoked may well be inferred in all cases of joint reciprocal wills unless something to show a contrary intention appears. Unlike the agreement to make a will, this contract should be susceptible of breach by a revocation of the will during the lives of the parties. There are, however, several dicta, following an early English case on this point, to the effect that, even where a contract may be implied, the will is revocable as to his share by either testator, giving notice to the co-testator.[8] Yet if one revoked without notice and died, clearly equity would enforce the agreement against his estate.[9] Or if one testator died and the other accepted the benefits of the will, the agreement should be enforced against the survivor like a promise for good consideration to make a will. Though equity here as always would be loath to declare a revoking will void, yet, in case of a breach as by a fraudulent conveyance by the survivor, it might, during his life, at the instance of the beneficiaries impress upon his property the liability to answer for the contract.[10] At any rate, after the death of the survivor who has accepted the benefits of the co-testator's will and then revoked his part of the will, equity according to a recent decision will give the beneficiaries under the original will a remedy against voluntary transferees of the survivor's property to the extent of their interest under the will. *Bower* v. *Daniel*, 95 S. W. Rep. 347 (Mo., Sup. Ct.). It follows, of course, that they would have a remedy against his estate in the nature of specific performance.[11] Similarly, instruments like that in class *a*, when the circumstances show they were made in accordance with a contract, should be enforceable in the same manner as the joint reciprocal wills chiefly discussed.

OUSTER OF MUNICIPAL OFFICERS. — A constitutional or statutory enactment that any public officer shall fulfill certain requirements cannot be overridden even by popular vote. This is true when a condition precedent is demanded,[1] — for example, that the officer must be twenty-one years of age, — or when specified acts of misconduct in office are declared to work a forfeiture of the term.[2] In the former case the person elected in disregard of the condition becomes at most a *de facto* officer; while in the latter, if guilty of the forbidden acts, he continues to be a *de jure* officer until removed. In both cases the province of the courts in *quo warranto* is merely to determine a question of fact, — whether there has been a compliance with the legislative requirements.

A more difficult question grows out of the second class of cases, when,

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[7] See Dufour *v.* Pereira, 1 Dick. 419; Clayton *v.* Liverman, 2 Dev. & B. (N. C.) 558, 563.

[8] See Dufour *v.* Pereira, *supra;* Edson *v.* Parsons, 155 N. Y. 555, 566; Duvale *v.* Duvale, 54 N. J. Eq. 581, 588.

[9] See Edson *v.* Parsons, 85 Hun (N. Y.) 263.

[10] Dufour *v.* Pereira, *supra;* Carmichael *v.* Carmichael, 72 Mich. 76. See Duvale *v.* Duvale, *supra.*

[11] *Cf.* Bolman *v.* Overall, 80 Ala. 451.

[1] Spear *v.* Robinson, 29 Me. 531; State *ex rel.* Staes *v.* Gastinel, 20 La. Ann. 114.

[2] People *ex rel.* Atty.-Gen. *v.* Heaton, 77 N. C. 18.

after the court having found grounds for forfeiture has pronounced judgment of ouster, the ousted officer is re-elected to the same office. If the re-election is to a subsequent term, the wrongful acts for which he was previously expelled cannot be made the basis for a second removal. Indeed, though it would seem that re-election should be no condonation, the weight of authority is that wrongful acts, though not resulting in removal, committed in a previous term can never thereafter be a ground for removal.[3] The effect, after judgment of ouster, of a re-election to the same term has recently been squarely presented for the first time. *State* v. *Rose*, 86 Pac. Rep. 296 (Kan.). The holding here was that, at all events, if the ouster expressly excluded the defendant for the remainder of the two-year term, any assumption of the duties of the office under the new election was a contempt of court. The theory of the court was that the two-year term was an entity, and that once the entity had been adjudged forfeit and had been wrested from the incumbent, nothing could restore it. The fallacy in this view seems to be that it overlooked the fact that any election is but a conferring of authority for a stated period, subject to defeasance if certain conditions subsequent happen. In the case at hand, the original authority was cut short by the court; but in doing this the court had exhausted its power. It had not been given the further right to disqualify.[4] The whole conception of a two-year term as necessarily a unit is artificial, though doubtless useful in many cases. A re-election during its continuance, though popularly said to be "to fill the unexpired term," is, after all, to fill a new term, which happens to have the same farther limit as the old. A term is thus really a tenure, and though the old tenure be ended by the ouster, there is nothing to prevent a new conferring of authority upon the same individual. The old term, to be sure, may be dead; but on its death a new one arises. The reasoning of the court would lead to the result that as we must look at the object — the office — rather than at the subject — the office-holder, — the former is, when taken from the latter, utterly gone, not only as against him, but as against the whole world, until the term comes to its appointed end. The court could properly do no more than oust the officer for what he had done, relying on the good sense of the voters not to re-elect him.[5] The attempt to do more, being an abridgment of the people's right of free choice, was beyond the power of the court; and the officer could not be in contempt for disobeying the invalid order. Indeed, it may be said that strictly he was not disobedient at all, since it was not the old term which he entered upon, but an entirely new thing. The result reached by the case is eminently desirable; but it should rather be achieved by the legislature, which alone has the power to annex a penalty of disqualification for misfeasance by municipal officers.[6]

INTERRUPTION OF THE ADVERSE ENJOYMENT OF EASEMENTS. — It is commonly said that the adverse enjoyment of easements which begets title

[3] Speed *v.* Common Council of Detroit, 98 Mich. 360. But see State *v.* Welsh, 109 Ia. 19.

[4] See State *ex rel.* Tyrrell *v.* Common Council of Jersey City, 25 N. J. L. 536, where *mandamus* was granted to compel a common council which had expelled the relator to take him back after an election to fill the vacancy.

[5] State *ex rel.* Tyrrell *v.* Common Council of Jersey City, *supra*.

[6] *Cf.* State *ex rel.* Childs *v.* Dart, 57 Minn. 261, on which the Kansas court relies. That was a case of reappointment, but the same rule should apply.